(1)
Supreme Court, U.S.
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OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

JAMES RAY WHITE,

Petitioners,

v.

KENNETH FRIEDLAND, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERIORARI

James Ray White
3239 U.S. 1 North
Mims, FL 32754
(321) 268-0398

Petitioner Pro Se

28 pp.

QUESTIONS PRESENTED

1. District Court Judge gave Petitioner until November 8, 2000, to file a paper in court. How could appeals court Clerk begin tolling of time for filing excerpts of record before elapse of time granted by District Court Judge?

2. Two different letters from the Clerk of the Eleventh Circuit Court of Appeals give divergent evidence of computation of time for District Court tolling motion. How is dismissal of appeal not "capricious" ruling of Clerk's Office?

3. The Fifth District Court of Appeals Rule 27.1.14 allows the Clerk to reinstate appeals dismissed by the Clerk. There is Rule 17(3)(c)(13) of the Eleventh Circuit is authority for the Clerk to reinstate or appeal in the Eleventh Circuit. Use of this authority or non-use of it is capricious in that it lacks definition of circumstances in which Clerk may reinstate. Capricious autonomy of the Clerk affects the rights of this Petitioner, who is entitled to equal protection of the law.

4. Clerk of Eleventh Circuit ignores Federal Rules of Appellate Procedure 26(a) Computation and extension of Time, which says "or when the act to be done is the filing of a paper in court." The Clerk began the computation of time on October 17, 2000, 22 days before the November 8th deadline granted by Judge Conway. How and by what law or rule did the Clerk make the not-filing of the paper retroactive to October 17th?

5. "Excerpts from the record" is a broad and general term that is almost impossible to comply with without sending copies of the entire record. Other Circuits do not use this term in

any manner expecting compliance or indicating a penalty for noncompliance. An"excerpt" is of course, an excision from a book or a letter or a paper, or a speech or paraphrase. But what 'excerpts' or words or phrases is the Court looking for? How can a pro se litigant know?

6. Petitioner's appeal was dismissed for want of prosecution--as interpreted by a Deputy Clerk. When two Deputy Clerks issue conflicting letters as to the tolling of time, Rule 47 (b) should apply because there is no controlling law or rule to resolve the issue. Both letters are signed by the Clerk of the Court with the Deputy Clerks' signatures appearing underneath. Fifth Circuit Rule 42.4 says that additional time may be granted by the Clerk for excusable neglect, mistake, or inadvertance of counsel or pro se litigant. The two contradicting letters from the Clerk caused the Petitioner to inadvertantly be late in filing the excerpts. Petitioner again points to divergence between Circuits as grounds for this Courts review of his cause.

7. An appeal should not be dismissed so lightly if there is any real concern for justice in the American system or true regard for the right of judicial review. Even though Petitioner does not know what "excerpts from the record" amounts to, he would have copied the entire record and sent it in to keep his appeal alive. There was no abondonment of prosecution or lack of prosecution. There was confusion generated by the Clerk of the Court of the Eleventh Circuit and divergence of rules and procedures between the Circuits. The Clerk did not have a duty to dismiss the appeal. He had a choice to dismiss the appeal, and Petitioner believes that this is arbitrary and capricious--and, as such, illegal and unconstitutional.

See copies *Corpus Juris Secundem*, 5a, § 1583. An appeal with merit should not be dismissed for merely technical reason. The merits must be tried by the court and not the clerk. Also in including District Courts granting of orders dismissing the various defendants only one side is seen by this court and the Appeal Brief by appellant is not submitted to this court to present his points at law against the rulings of the District Court. Since the present case is appealed on the actions of the clerk, it was not appropriate to include appellant's Brief on Appeal.

8. Finally, Petitioner's trump card is USCA Rule 16 (b) dismissal of cases for failure to prosecute: "The Clerk shall issue notice ... to the prose appellant that upon expiration of 15 days from the date thereof the appeal will be dismissed for want of prosecution if the default is not remedied." No such notice was sent to this petitioner. This Rule 16 (b) is from the Eleventh Circuit and Petitioner holds that the Clerk was aware of this rule and failure to comply with it is further evidence of capriciousness of the Clerk.

CERTIFICATE OF INTERESTED PARTIES

PARTIES DEFENDANT

Kenneth Friedland, Brevard County Judge

Heather C. Jones, Assistant State Attorney, Brevard County, Florida

Roshawn Banks, Assistant Public Defender, Brevard County, Florida

David Pittner, Assistant Attorney General Counsel for Defendants, 501 E. Kennedy, Tampa, Florida 33602

PARTIES PLAINTIFF

James Ray White, Appellant Pro Se. 3239 U.S. 1 North, Mims, Florida 32754.

OTHER INTERESTED PARTIES

Eleventh Circuit Court of Appeals, U.S. District Court, Orlando

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PETITION FOR THE COMMON WRIT LAW OF CERIORARI *OR* DIRECT APPEAL

MAY IT PLEASE THE COURT:

Comes now James Ray White, Appellant Pro Se, and respectfully states:

1. The Clerk of the Eleventh Circuit Court of Appeals wrongfully dismissed Appellant's appeal citing as grounds that Appellant had abandoned prosecution of his appeal under Federal Rule of Civil Procedure Rule 31.

2. The Clerk used as computation date October 17, 2000, for tolling of time on determination of "tolling" document #65 in District Court.

3. In same District Court order dismissing Document #65, U.S. District Judge for the Middle District of Florida GRANTED Appellant's motion for enlargement of time and GRANTED Appellant's motion to amend, giving Appellant until November 8th, 2000,to file the Amendment. See Appendix No. 1.

4. Tolling could not begin until expiration of enlargement of time GRANTED by U.S. District Judge Anne C. Conway.

5. Appellant conferred with defense counsel sometime around the 1st of November by telephone and the decision was made not to file the amendment but instead to let the case proceed on appeal. The amendment was slowing the case down.

6. On December 1, 2000, the Clerk of the Eleventh Circuit sent Appellant a notice that his case had been dismissed for want of prosecution. Appellant called the Clerk and pointed out that he had a letter from the Clerk's Office dated November 22 that said tolling had not begun yet and therefore returned papers Appellant had filed. The Clerk's office said the Clerk was not going to change its ruling on the dismissal. See Appendix 2 and 3.

7. Appellant filed a motion to reinstate his appeal, which was denied. See Appendix 4. It is not clear whether the Court or the Clerk denied the motion. But it, the denial, was not signed by a Judge. Every order from the District Court was signed by Judge Anne C. Conway.

8. The Rules do provide for the Clerk to sign certain orders and for the Clerk to dismiss for failure to comply with FRCP 31. That is not the case in this cause. What we have here is two contradicting letters from the Clerk's Office as to the tolling of time, and disregard for Judge Conway's order giving the Appellant until November 8th to file a motion. Business with the District Court was not concluded until November 8th. Based on the contradicting letters and common sense, Appellant maintains that tolling could not begin until November 8th and the conflicting letters were confusing to the Appellant, a pro se litigant, through no fault of his own or unwillingness to abide by the rules.

9. Appellant was not notified of the beginning of tolling for his appeal or sent notice of 15-day times period in which he must send excerpts from the record to the Court pursuant to Rule of Appellant Procedure 16(b).

10. Rule 26 (b) prohibits extension of time for filing notice of appeal but makes no mention for brief on appeal, after notice was timely filed.

11. Rule 27.1.14 of the Fifth Circuit allows the Clerk to reinstate appeals dismissed by the Clerk. Appellant contends that his case shows arbitrary consideration by the Eleventh Circuit Court Clerk. This arbitrariness is subject to review by the Supreme Court. Rule 17(3)(c)(13) Clerk may reinstate appeal--BUT no clarification or rationale is given for use or non-use of reinstatement authority. Result is arbitrary decision of ministerial employee instead of studied ruling of magistrate or judge.

JURISDICTION

1. The U.S. Supreme Court has original jurisdiction over all writs of certiorari.

2. Appeal from the rulings or orders of U.S. Circuit Courts of Appeal is to the United States Supreme Court,except in the case of some interlocutory orders. This case does not involve an interlocutory order.

3. The U.S. Constitution guarantees the right to judicial review.

4. The due process clause of the Fourth Amendment is invoked and the equal protection clause of the Fourteenth Amendment is invoked. *Corpus Juris Secundem*, Volume 54, 1978 Edition, states that a pro se litigant is not required to state chapter and verse of the laws to which he is inferring so long as he states the essence of the laws.

5. The application for ceriorari contains questions of interpretation of the Federal Rules of Civil procedure as well as issues of constitutional law.

6. Federal Rule of Appellate Procedure 27 (b) states that any person aggrieved by the Clerk can make application to a Justice or to the court for review of the grievance. USSC Rules of Appellate Procedure. Rule 30,echoes the same right to review. This Court has jurisdiction.

REASONS FOR GRANTING THE WRIT

Federal Rules of Appellate Procedure 26(a) *Computation and Extension of Time*, says "or when the act to be done is the filing of a paper in court." The District Court gave the Appellant until November 8th to file the amendment. The act of not filing the amendment does not by law or established Rule make the issue revert back to October 17th. Appellant asserts that this case is governed on two fronts by Rule 47(b)--procedure when there is no controlling law, first in the retroactive view taken by the Clerk, and, second, by the two different views in the two letters from the Clerk's Office. The result cannot be to Appellant's prejudice without notice of the issues. The doctrine to be applied is what a reasonable person would perceive in like circumstance.

Judge Conway's order was not elliptical. It did not imply default or penalty for not filing the motion to amend. The time was given. The Clerk of the Eleventh Circuit has no authority to overrule the order of a Federal Judge. Appellant filed a motion for the District Court to order the tolling to begin after he received the letter of November 22nd because he was anxious for his case to be heard by the Eleventh Circuit. The totality of the circumstances must be reviewed here. The concept of "abondoned prosecution" should be evaluated in this case. The record reflects a vigorous prosecution of Appellant's cause, not any abandonment of his case.

The Clerk did not have to proceed as he did. Rule 42.4 says that additional time may be granted by the Clerk for excusable neglect, mistake, or inadvertance of counsel or pro se litigant. "Inadvertance" applies here due to the totalitarity of the circumstances, Judge Conway's order and the differing letters

from the Clerk's Office. Benefit of the doubt should be given to the Appellant due to the constitutional right to judicialreview. This cause is very serious to the Appellant. He has invested hundreds of hours of legal research and a great dealof expense in his case. He believes his cause is just and sustaining and on review by the Eleventh Circuit he will prevail. Whether that is true or not begs the question. The salient point is Appellant's appeal was frustrated by misapplication of the law and misunderstanding of the facts surrounding the issue of appeal. In light of what has been presented, how was Appellant to know tolling began on October 17th?

Back on the District Court level, an important thought is embodied in Rule 83. Rules by District Courts; Judges Directives (2) "A local rule imposing a requirement of form shall not be enforced in such a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement." Appellant has not willfully failed to comply with Rule 31. The issue of equal protection of the law arises with Rule 42.4 and the capriciousness of the Clerk of the Eleventh Circuit.

RELIEF SOUGHT

Appellant prays the Court to order his appeal reinstated that his cause might be heard and adjudicated on its merits by a fair and impartial tribunal of the Eleventh Circuit Court of Appeals as is his right under the law.

James Ray White

Respectfully Submitted, James Ray White, Appellant Pro Se
3239 U.S. 1 NMims, Florida 32754
321-268-0398 Phone or Fax

APPENDIX 1

United States District Court
Middle District of Florida
Orlando Division

James Ray White,

Plaintiff

vs. Case No. 6:00-cv-11-Orl-22C

Kenneth Friedland, Brevard County Court Judge, Heather Jones et al., Prosecuting Attorneys, Roshawn Banks, Public Defender

Defendants.

ORDER

This cause is before the Court on Plaintiff James Ray White's Motion to Reconsider Order Dismissing Roshawn Banks (Doc. 52), filed August 28, 2000. on Plaintiff Pro Se James Ray White's Motion for Permission to Amend his Motion to Rescind the Court's Order Dismissing Roshawn Banks (Doc. 61) filed September 25, 2000, and on Plaintiff Pro Se James Ray White's renewed Request for Enlargement of Time to Amend Motion to Reconsider the Defendant Roshawn Banks' Dismissal from the Case (Doc. 65) filed October 13, 2000.

Based on the foregoing, it is ordered as follows:

1. Plaintiff Pro Se James Ray White's Motion for Permission to Amend his Motion to Rescind the Court's Order Dismissing Roshawn Banks (Doc. 61) is GRANTED.

2. Plaintiff Pro Se James Ray White's Renewed Request for Enlargement of Time to Amend Motion to Reconsider the Defendant Roshawn Banks' Dismissal from the Case (Doc. 65) is GRANTED.

3. Plaintiff James Ray White's Motion to Reconsider Order Dismissing Roshawn Banks (Doc. 52) is DENIED without prejudice.

4. Plaintiff shall file his Amended Motion to Reconsider Order Dismissing Roshawn Banks by November 8, 2000.

DONE and ORDERED in Chambers, Orlando, Florida this 17th day of October. 2000.

ss Anne C. Conway
ANNE C. CONWAY
United States District Judge

Copies furnished to:

James Ray White, *pro se*
Counsel of Record
Clerk, Eleventh Circuit Court of Appeals

APPENDIX 2

United States Court of Appeals
Eleventh Circuit
56 Florsyth Street, N.W.
Atlanta, Georgia 30303

November 22, 2000

Thomas K. Kahn
Clerk

James Ray White
3239 N. U.S. 1
Mims, FL 32754

RE: 00-14567-H James Ray White v. Kenneth Friedland
DC DKT NO.: 00-00011CV-ORL-22C

The papers you recently submitted to this office are being returned for the reason stated.

Returning herewith is Appellant's Civil Appeal Statement form with attachments as this form is not required by pro se appellants. This appeal is awaiting district court ruling on a tolling motion.

Sincerely,

THOMAS K. KAHN, Clerk

Reply to: Liz McDonald (404) 335-6187

Encl.

APPENDIX 3

In The United States District Court of Appeals
For The Eleventh Circuit

No. 00-14567- HH

James Ray White, *Plaintiff*

versus

Kenneth Friedland, *Defendants-Appellee*

Appeal from the United States District Court for the
Middle District Of Florida

ENTRY OF DISMISSAL

Pursuant to 11th Cir.R.42-2(c), this appeal is hereby dismissed for want of prosecution because appellant has failed to file the record excerpts within the time fixed by the rules, effective this 1st day of December, 2000.

THOMAS K. KAHN
Clerk of the United States Court
of Appeals for the Eleventh Circuit

By: Sandra Stevens
Deputy Clerk

For the Court - By Direction

APPENDIX 4

In The United States District Court of Appeals
For The Eleventh Circuit

No. 00-14567- HH

James Ray White,

Plaintiff-Appellant

versus

Kenneth Friedland, Brevard County Court Judge,
Heather Jones, Prosecuting Attorney,
Roshawn Banks, Public Defender,
Defendants-Appellees,

Sandy Crawford, Clerk of the Court
Defendant.

On Appeal from the United States District Court
for the Middle District of Florida

BEFORE: BIRCH and HULL, Circuit Judges.

BY THE COURT:

Appellant's motion to reinstate appeal is denied.

APPENDIX 5

United States Court of Appeals
Eleventh Circuit
56 Florsyth Street, N.W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

In Replying Give Number
Of Case And Names of Parties

James Ray White
3239 N. U.S. 1
Mims, FL 32754

RE: 00-14567-H James Ray White v. Kenneth Friedland
DC DKT NO.: 00-00011CV-ORL-22C

The following action has been taken in the referenced case:

The enclosed order has been ENTERED.

Sincerely,

THOMAS K. KAHN, Clerk

Reply to: Regina Veals-Gillis
(404) 335-6163

James Ray White
3239 N. U.S. 1
Mims, FL 32754

March 20, 2001

RE: 00-14567-H James Ray White v. Kenneth Friedland
DC DKT NO.: 00-00011CV-ORL-22C

TO: James Ray White

CC: Administrative File

APPENDIX 6

United States District Court
Middle District of Florida
Orlando Division

JAMES RAY WHITE,
Plaintiff

vs. Case No. 6:00-cv-11-Orl-22C

KENNETH FRIEDLAND, Brevard County Court Judge,
HEATHER JONES et al., Prosecuting Attorneys
ROSHAWN BANKS, Public Defender
Defendants.

ORDER

This cause is before the Court for consideration of the following motions: Defendant Banks' Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted (Doc. 12), filed January 31, 2000; Defendant Jones' Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted (Doc.14), filed January 31, 2000; and Defendant Friedland's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted (Doc. 16), filed January 31, 2000. After considering the arguments of both parties, the Court finds that the motions are due to be granted.

I. Background.

Plaintiff, James Ray White ("White"), proceeding pro se, instituted this civil rights action in connection with the alleged

treatment he received during his participation in the state criminal justice system. In support of his various constitutional claims, White alleges the following

On February7, 1999, White was arrested for driving while his license was suspended, fleeing and eluding a Brevard County deputy sheriff, and resisting arrest without violence. On March 3, 1999, Heather Jones ("Jones"), an assistant state attorney in Brevard County, filed an information which charged White with three with misdemeanors: driving while license suspended (Court 1), fleeing and eluding a police officer (Count 2), and resisting arrest without violence (Count 3). White was subsequently served with a summons.

On April 7,1999, White appeared for his arraignment at which time Roshawn Banks ("Banks") was appointed his public defender. White pled not guilty and requested a jury trial. A docket sounding was set for May 25, 1999. At the docket sounding, Banks requested a non-jury trial, allegedly without White's consent. According to White, Banks informed him at that time that he was not entitled to a jury trial for the misdemeanors with which he was charged. White alleges that since he is "developmentally disadvantaged and 'learning impaired' all through school," he did not understand the process, the law, his rights, or the legal system. A non-jury trial was set for June 10,1999.

On June 10, 1999, Banks requested a continuance of White's trial. In support of her request, Banks informed the court that White was in jail on that day on unrelated matters and was not available for trial. The trial was continued to July 12, 1999. On July12, the State requested a continuance, which was granted. A new trial date was set for August 11, 1999. White's

non-jury trial commenced on that date.

White alleges that on the day of the trial, he told Banks that he wanted a jury trial. Banks again informed White that he was not entitled to one. Upon trial, the court issued a judgment of acquittal on Court 1, and found White guilty of Counts 2 and 3. The presiding judge, Judge Kenneth Friedland ("Friedland"), sentenced White to ninety (90) days in jail and placed him on probation for one year. In addition, White was ordered to pay court costs of $131.00, probation and supervision fees, and $300.00 to the public defender's office. Judge Friedland then advised him of his right to appeal and informed him that his attorney will file the appeal for him. White was taken to jail where he served sixty (60) days. Banks did not file the appeal. On October 9, 1999, White was released from jail and began serving his probation.

White alleges that Roshawn Banks was not prepared to defend White because she did not have important materials with her. White also alleges that Banks failed to adequately cross-examine the State's only witness in White's defense. White claims that despite his request in open court that he wished to appeal, Banks failed to file an appeal on his behalf. White claims that he was ultimately convicted due to Banks' neglect.

On September 17,1999, while still incarcerated, White filed a petition for habeas corpus relief in state court. The writ was sent to Judge Friedland. White alleges that Judge Friedland had no jurisdiction to rule on the writ, because he is a county, not circuit, judge. According to White, Judge Friedland treated the writ as a motion for post-conviction relief under Fla.R.Crim.P. 3.850. Judge Friedland subsequently vacated White's conviction and ordered a new trial on the ground that White had

not waived his right to a trial by jury.

II. **Legal Standard.**

A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief. *See Conley v. Gibson,* 355 U.S. 41, 45-46 (1957). In ruling on a motion to dismiss, a trial court must accept the allegations of the complaint as true and must construe the facts alleged in the light most favorable to the plaintiff. *See Hunnings v. Texaco, Inc.*, 29 F.3d 1480, 1484 (11th Cir. 1994). Only where there is no construction of the factual allegations that will support the cause of action may the Court dismiss the complaint as a matter of law. *See Marshall County Bd. of Educ. v. Marshall County Gas Dist.*, 992 F.2d 1171, 1174 (11th Cir. 1993).

III. Analysis.

A. Claims against Defendant Banks.

White sues Banks under 42 U.S.C. Sections 1981, 1985, and 1986. White fails to state a claim against Banks under any of those statutes.

42 U.S.C. § 1981 provides, in pertinent part:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes,

licenses, and exactions of every kind, and to no other.

Id.

To establish a claim under § 1981, a plaintiff must allege 1) that he is a member of a racial minority; 2) that the defendant intended to discriminate against him on the basis of race; and 3) that the discrimination concerned an enumerated activity under the statute; that is, one of those activities, or rights, directly or indirectly enumerated in the statute. *See White v. Florida Highway Patrol, Div. of Florida Dept. of Highway Safety & Motor Vehicles,* 928 F. Supp. 1153, 1157 (M.D. Fla. 1996); *Baker v. McDonald's Corp.,* 686 F. Supp. 1474, 1481 (S.D. Fla. 1987), *aff'd* 865 F.2d 1272 (11th Cir. 1988), *cert. denied,* 493 U.S. 812 (1989); *see also Mian v. Donaldson, Lufkin & Jenrette Securities Corp.,* 7 F.3d 1085, 1087 (2nd Cir. 1993).

White has failed to plead any facts which would state a claim under § 1981. Significantly, his Complaint is devoid of any allegation that he suffered intentional discrimination on the basis of race. Accordingly, White's § 1981 claim is due to be dismissed.

White has likewise failed to plead any facts which state a claim under either § 1985(3) or § 1986. The four elements of a § 1985(3) claim are: (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of equal protection of the laws, or of equal privileges and immunities under the laws; (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right of a citizen of the United States. *See Munson v. Friske,* 754 F.2d 683, 694-695 (7th Cir. 1985). In addition, the conspiracy must also be motivated by

"some facial or perhaps otherwise class-based, invidious discriminatory animus behind the conspirators' action." *McLellan v. Mississippi Power & Light Co.*, 545 F.2d 919, 928 (5th Cir. 1977).

42 U.S.C. § 1986 provides a cause of action against anyone who "having knowledge that any of the wrongs conspired to be done and mentioned in section 1985 are about to be committed and having power to prevent or aid, neglects to do so." *Katz v. Morgenthau*, 709 F. Supp. 1219, 1236 (S.D.N.Y.), *aff'd in part and rev'd in part on other grounds*, 892 F.2d 20 (2d Cir. 1989).

It is clear that, to recover under § 1985, White must allege some sort of class-based discrimination. White has not done so. It necessarily follows that White cannot state a claim under § 1986. *See Dacey v. Dorsey*, 468 F.2d 275, 277 (2d Cir.), *cert. denied*, 436 U.S. 906 (1978). Accordingly, all of his claims against Banks must be dismissed.

B. Claims against Defendant Jones.

White sues Heather Jones, the assistant state attorney who prosecuted his case, under 42 U.S.C. Sections 1981, 1983, 1985, and 1986. White alleges that Jones filed an information on March 3, 1999, charging White with various misdemeanors, and that the information was based on the "weakly and vaguely made" complaint of a deputy sheriff. White is unsure whether Jones is the prosecutor who eventually tried his case. White claims that after trial, Jones failed to respond to his petition for habeas corpus relief in the Brevard County Court. When a hearing was held on the petition on November 7, 1999, Jones failed to attend, and, according to White, caused the hearing to be continued to until November 23.

Jones has set forth several grounds in support of her motion to dismiss. The court need not reach the merits of each of Jones' arguments because her first, with respect to prosecutorial immunity, is dispositive. The Eleventh Circuit has recently made clear that prosecutors performing "prosecutorial functions" are entitled to absolute immunity, and are therefore not subject to suit under § 1983. *See Long v. Satz,* 181 F.3d 1275, 1281 (11th Cir. 1999) (citing *Imbler v. Pachtman,* 424 U.S. 409 (1976). The focus is on the nature or function of the prosecutor's activity. *See Yharra v. Reno Thunderbird Mobile Home Village,* 723 F.2d 675,678 (9th Cir. 1984). Where a prosecutor acts as an advocate "in initiating a prosecution and in presenting the state's case," absolute immunity applies. *Id.* (quoting *Imbler,* 424 U.S. at 431).

While *Imbler* involved a prosecutor's absolute immunity in a 1983 action, courts have extended its reasoning to actions raising asserted violations of other Civil Rights Acts, such as § 1985(3). *See Coon v. Froehlich,* 573 F. Supp. 918,920 n. 3 (S.D. Ohio 1983).

Upon review of the facts of this case, the Court finds that Jones was engaged in purely "prosecutorial functions" and is therefore immune from suit as to all of the claims alleged against her in the Complaint. Accordingly, Jones' motion to dismiss is due to be granted.

C. Claims against Defendant Friedland.

White's claims against Judge Kenneth Friedland are similarly barred by the doctrine of immunity. It is well settled that judges are immune from damage actions for judicial acts taken within the jurisdiction of their courts. *See Bradley v.*

Fisher, 80 U.S. (13 Wall.) 335,347 (1872); *Pierson v. Ray,* 386 U.S. 547, 554-55 (1967). Judicial immunity applies "however erroneous the act may have been, and however injurious in its consequenes it may have proved to the plaintiff." *Cleavinger v. Saxner,* 474 U.S. 193 (1985) (quoting *Bradley,* 80 U.S. (13 Wall.) at 347).

Judicial immunity is not absolute. A judge lacks immunity where he or she acts in the "clear absence of all jurisdiction," *Bradley,* 80 U.S. (13 Wall.) at 351, or performs an act that is not "judicial" in nature. *See Stump s. Sparkman,* 435 U.S. 349, 360 (1978).

To determine if a given action is judicial, courts focus on whether (1) the precise act is a normal judicial function; (2) the events occurred in the judge's chambers; (3) the controversy centered around a case then pending before the judge; and (4) the events at issue arose directly and immediately out of a confrontation with the judge in his or her official capacity. *See, e.g., Dykes v. Hosemann,* 776 F.2d 942, 946 (11th Cir. 1985) (en banc) (per curiam). These factors are to be construed generously in favor of the judge and in light of the policies underlying judicial immunity. *See Adams v. McIlhany,* 764 F.2d 294, 297 (5th Cir. 1985). In this case, a review of each factor leads this Court to find that Judge Friedland is entitled to absolute immunity from all of White's claims.

IV. Conclusion.

Based on the foregoing, it is ORDERED as follows:

1. Defendant Banks' Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted (Doc. 12),

filed January 31, 2000; Defendant Jones' Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted (Doc. 14), filed January 31, 2000; and Defendant Friedland's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted (Doc. 16), filed January 31, 2000, are GRANTED.

2. This case is hereby DISMISSED.

3. All other pending motions are denied as MOOT.

4. The Clerk is requested to CLOSE this case.

DONE and ORDERED in Orlando, Florida this 21st day of August, 2000.

ss Anne C. Conway
ANNE C. CONWAY
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties